

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Schools and Libraries Universal Service	)	CC Docket No. 02-6
Support Mechanism	)	
	)	
Petition for Reconsideration of Sprint Corp.	)	
And BellSouth Corp.	)	

**COMMENTS  
OF THE  
NATIONAL TELECOMMUNICATIONS COOPERATIVE ASSOCIATION**

The National Telecommunications Cooperative Association (NTCA)<sup>1</sup> submits these comments in support of the Sprint Corporation and BellSouth Corporation (collectively, Petitioners) petition for reconsideration of the *Fifth Report and Order and Order*, released August 13, 2004 in CC Docket No. 02-6. NTCA agrees with Petitioners that the Commission violated the Administrative Procedure Act (APA) by not seeking the industry's input before it changed the rules regarding the returning of funds by E-rate beneficiaries and the certifications required on FCC Form 473.

In its *Fifth Report and Order*, the FCC determined that E-rate applicants will be considered to have failed to pay their non-discounted share of services eligible under the

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<sup>1</sup> NTCA is the premier industry association representing rural telecommunications providers. Established in 1954 by eight rural telephone companies, today NTCA represents more than 560 rural rate-of-return regulated telecommunications providers. All of NTCA's members are full service incumbent local exchange carriers (ILECs) and many of its members provide wireless, cable, Internet, satellite and long distance services to their communities. Each member is a "rural telephone company" as defined in the Communications Act of 1934, as amended (Act). NTCA's members are dedicated to providing competitive modern telecommunications services and ensuring the economic future of their rural communities

E-rate program if payment is not made within 90 days after delivery of services. The failure to pay will result in recovery of any E-rate funds granted.

NTCA agrees with the Commission and Petitioners that applicants are responsible for paying their non-discounted share of the bill, and in a timely manner. However, the Commission adopted the timeframe after which penalties attach without adequate notice or input from the industry regarding its reasonableness. The Commission never indicated to the affected parties that it was considering a 90-day timeframe, nor developed a record regarding average payment periods. The *Fifth Report and Order* cites to no comment or record that supports its conclusion that 90 days is appropriate.

Given that the consequences of failure to remit payment are harsh – recovery of the funds disbursed, the Commission must first seek input from the affected parties about common billing and payment practices. The Commission should first determine when a payment would actually be considered “late” before it adopts timeframes with penalties for non-compliance. The Commission did not follow the notice and comment requirements of the APA and must withdraw its rule.

NTCA also supports Petitioners’ request for reconsideration of the new certification requirements of the Form 473. Petitioners state that combining the certifications onto one form is inappropriate for large service providers because the parties involved with preparing a competitive bid are separate from the parties who render an invoice. NTCA submits that the format of the new certification may be equally inappropriate for the small service providers, but since the Commission did not seek comment on a proposal to link a new certification to the existing form, there was no opportunity for the carriers to consider the idea and comment on it.

The APA requires that affected parties have adequate notice of and opportunity to comment on potential rule changes. The Commission did not seek adequate industry input on the appropriate time frame for requiring the return of E-rate funds, nor on the certification requirements. The Commission should rescind the rules at issue and seek comment on rules that will accomplish the laudable goals of the *Fifth Report and Order* in a manner that makes sense given the operational realities of the industry.

Respectfully submitted,

NATIONAL TELECOMMUNICATIONS  
COOPERATIVE ASSOCIATION

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## CERTIFICATE OF SERVICE

I, Gail Malloy, certify that a copy of the foregoing Comments of the National Telecommunications Cooperative Association in CC Docket No. 02-6, FCC 04-190 was served on this 16th day of February 2005 by first-class, U.S. Mail, postage prepaid, to the following persons.

/s/ Gail Malloy

Gail Malloy

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